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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,157	09/09/2003	David Lloyd		5740

7590 05/12/2004
David L. Neary
711 Manchester Trail Drive
Spring, TX 77373

EXAMINER

SPITZER, ROBERT H

ART UNIT PAPER NUMBER

1724

DATE MAILED: 05/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/658,157

Applicant(s)

NEARY, DAVID LLOYD

Examiner

Robert H. Spitzer

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1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 09/09/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The abstract of the disclosure is objected to because of the use of the legal phraseology of "means". Correction is required. See MPEP § 608.01(b).
2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. On the figures of drawing, the following needs to be corrected: on Fig. 1, there is no description in the specification of numbers 23 and 25; and, on Fig. 4, there is no description in the specification of numbers 73 and 78. Either such description must be added to the specification or the numbers must be deleted from the figures.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite because "the said" should not be used together, as each word, individually, has a different legal meaning in the writing of claims. Claim 1 is further indefinite because when "particularly applied" is used, it is not known whether the specific "air separation" is necessary to meet this claim or whether the more generic gas separation is sufficient. Claim 2 is indefinite because in lines 5

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and 9, the use of "preferred" is the same as "particularly applied" with respect to the limitations it places on this claim. Claim 2 is further indefinite because it ends in a ";", therefore, it is not known whether there are additional recitations missing or if this is merely a punctuation error. Claims 3 and 4 are indefinite because they depend from the above indefinite claims.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the disclosure of either Schmidt et al. (4,892,565) or Grgich et al. (5,632,802), wherein the feed gas is sent to the adsorber vessels for the adsorption step under the influence of a vacuum pump and not by a feed gas compressor or blower.

8. The remaining references listed on both the PTO-1449 and the PTO-892 show art of interest.

9. Applicant's response to this Office action should also include the following editorial changes: page 2, line 4, "be" should be canceled; page 2, lines 8 and 9, either "the" or "said" should be canceled; page 2, line 10, either "The" or "said" should be canceled; page 4, line 20, "to a" should be "to an"; page 5, line 1, "a" should be "an"; page 7, line 1, "provide a " should be "provide an"; page 8, lines 3 and 17, "a" should be "an"; page 11, line 5, "includes" should be "include"; page 13, line 13, "contains" should be "contain"; page 14, lines 6 and 7, either "the" or "said" should be canceled; page 15,

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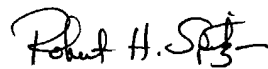
line 7, "a" should be "an"; page 16, line 17, "advances" should be "advance"; page 18, line 7, "enables" should be "enable"; page 18, line 13, "in" should be inserted after "shown"; page 20, line 19, either "the" or "said" should be canceled; page 21, line 5, "shows" should be "show"; page 22, line 11, "shows" should be "show"; page 23, line 9, "be" should be inserted after "can"; page 28, line 17, "a" should be "an"; page 33, line 20, "a" should be "an"; and, page 36, line 2, "a" should be "an".

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert H. Spitzer whose telephone number is (571) 272-1167. The examiner can normally be reached on Monday-Thursday from (5:30AM-4:00PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571) 272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 4, 2004


Robert H. Spitzer

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Primary Examiner
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